

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish a back injury causally related to the accepted July 12, 2017 employment incident.

## **FACTUAL HISTORY**

On August 10, 2017 appellant, then a 49-year-old physician, filed a traumatic injury claim (Form CA-1) alleging that on July 12, 2017 she experienced lower back pain and severe bilateral leg pain as she was bending down to place an intravenous (IV) line in preparing to anesthetize a patient while in the performance of duty. She had previously been diagnosed with a herniated lumbar disc. Appellant's supervisor attributed her condition beginning on July 12, 2017 to an exacerbation or progression from her underlying back pathology.

In an August 14, 2017 development letter, OWCP advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

Dr. Patrick A. Roth, a Board-certified neurosurgeon, submitted reports dated August 15 and 24, 2017. In his August 24, 2017 attending physician's report (Form CA-20), he recounted that appellant noticed severe sharp pain into both lower extremities after she bent down to place an IV line for a patient on July 12, 2017. Dr. Roth diagnosed acute, right greater than left, radiculopathy following a work injury. He noted that this condition was superimposed on her chronic back pain arising in 2012. Dr. Roth reported bilateral lateral recess stenosis at L4-5 and S1 as well as a right central disc protrusion and diagnosed intervertebral disc disorders with radiculopathy in the lumbar region. He indicated by checking a box marked "yes" that appellant's condition was caused or aggravated by the employment activity. Dr. Roth noted that appellant was at work and that she noticed severe sharp pain traveling to both lower extremities after she bent down to place an IV line for a patient. He recommended bilateral decompression with possible removal of the disc on the right. In the attending physician's portion of an authorization for examination and/or treatment (Form CA-16) dated August 15, 2017, Dr. Roth opined that appellant's history of injury was the direct and proximate cause of her diagnosed condition. He found that one of the causes of her condition was clearly the activities of work described by appellant.

On August 25, 2017 appellant completed the questionnaire provided by OWCP and again described her employment incident on July 12, 2017. She noted that she had previously experienced herniated discs in 2012 and November 2016. Appellant asserted that these preexisting conditions were aggravated on July 12, 2017 and that she required surgery.

By decision dated September 21, 2017, OWCP denied appellant's claim finding that medical evidence of record is insufficient to establish causal relationship between her diagnosed condition and her accepted employment incident.

On September 28, 2017 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. In a note dated July 28, 2017, Dr. Roth described appellant's July 12, 2017 employment incident and reviewed appellant's diagnostic studies. He diagnosed

bilateral lateral recess stenosis at L4-5, and S1 with superimposed right central disc herniation. Dr. Roth found that appellant was experiencing acute radiculopathy following a work injury and recommended surgery. He noted that appellant's current exacerbation occurred at work. Dr. Roth also noted that appellant had a history of similar pain which had resolved from prolonged physical therapy and time off work.

In an October 11, 2017 note, Dr. Roth described appellant's July 12, 2017 employment incident. He noted her previous intermittent back and leg pain. Dr. Roth explained that the relationship with work was the sudden onset of pain that had persisted for months which came on with bending and administering an IV into a patient. He also noted that appellant had a preexisting herniated disc at L4-5 with moderate lateral recess stenosis. Dr. Roth further reported that the type of preexisting disc herniation that appellant had made her very susceptible to injury while leaning forward which was exactly what brought on her persistent pain.

On February 27, 2018 counsel appeared at the oral hearing before an OWCP hearing representative.

By decision dated May 11, 2018, OWCP's hearing representative affirmed the September 21, 2017 OWCP decision. She found that Dr. Roth's medical reports were insufficiently well reasoned to explain whether and how the claimed event caused an injury or changed her underlying medical condition.

On June 25, 2018 appellant, through counsel, requested reconsideration and submitted additional medical evidence. In a report dated June 12, 2018, Dr. Roth noted appellant's history of injury while bending to place an IV line. He noted that appellant's MRI scan demonstrated disc herniation at L4-5 superimposed on spinal stenosis as well as active inflammatory process in the right side of the disc space. Dr. Roth opined that appellant had a disc herniation that occurred from flexion of the spine which occurred while she was bending over. He noted that because of her preexisting spinal stenosis, what was a relatively small disc herniation became more symptomatic resulting in an inflammatory reaction in the disc space on the right. Dr. Roth concluded that appellant's current exacerbation represented a quantitatively and qualitatively different pain compared to her baseline.

By decision dated September 6, 2018, OWCP denied modification of the May 11, 2018 decision. It found that Dr. Roth's June 12, 2018 report failed to provide the needed rationalized medical opinion evidence required to establish appellant's traumatic injury claim.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>3</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

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<sup>3</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>6</sup> The second component is whether the employment incident caused a personal injury.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's detailed opinion on whether there is causal relationship between the employee's diagnosed condition and the accepted employment incident.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.<sup>9</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a back condition causally related to the accepted July 12, 2017 employment incident.

On August 15 and 24, 2017 Dr. Roth diagnosed bilateral lateral recess stenosis at L4-5 and S1, right central disc protrusion, and, diagnosed intervertebral disc disorders with radiculopathy in the lumbar region. He described appellant's incident of bending over at work to place an IV and indicated by checking a box marked "yes" that he believed that appellant's condition was caused or aggravated by her employment activity. While Dr. Roth checked a box marked "yes," that the diagnosed condition was caused or aggravated by the July 12, 2017

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<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *T.M.*, Docket No. 19-0380 (issued June 26, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *C.B.*, Docket No. 18-0071 (issued May 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>9</sup> *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

<sup>10</sup> *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

employment incident, he failed to offer medical rationale explaining how her diagnosed back conditions were caused or aggravated by bending in the performance of duty.<sup>11</sup> Thus, the Board finds that this report is insufficient to establish appellant's burden of proof.

In reports dated July 28 and August 15, 2017, Dr. Roth opined that appellant's history of injury was the direct and proximate cause of her diagnosed condition. He found that one of the causes of her condition was clearly the activities of work described by appellant. In his July 28, 2017 report, Dr. Roth described appellant's July 12, 2017 employment incident and found that appellant was experiencing acute radiculopathy following a work injury and that appellant's current exacerbation occurred at work. A medical opinion must provide an explanation of how the specific employment factors physiologically caused or aggravated the diagnosed conditions.<sup>12</sup> Without medical reasoning explaining how the accepted employment activities caused or contributed to the diagnosed conditions, Dr. Roth's reports are insufficient to establish appellant's claim.<sup>13</sup>

Dr. Roth, in his June 12, 2018 report, noted appellant's history of injury while bending to place an IV line. He noted that appellant's MRI scan demonstrated disc herniation at L4-5 superimposed on spinal stenosis as well as active inflammatory process in the right side of the disc space. Dr. Roth opined that appellant had a disc herniation that occurred from flexion of the spine which occurred while she was bending over. He noted that because of her preexisting spinal stenosis, what was a relatively small disc herniation became more symptomatic resulting in an inflammatory reaction in the disc space on the right. Dr. Roth concluded that appellant's current exacerbation represented a quantitatively and qualitatively different pain compared to her baseline. However, the mere recitation of a claimant's history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.<sup>14</sup> Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's report is of limited probative value.<sup>15</sup> Therefore, this report of Dr. Roth is insufficient to meet appellant's burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>11</sup> *M.C.*, Docket No. 18-0361 (issued August 15, 2018); *Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

<sup>12</sup> *M.W.*, Docket No. 18-1624 (issued April 3, 2019); *B.H.*, Docket No. 18-1219 (issued January 25, 2019).

<sup>13</sup> *M.W.*, *id.*; *R.T.*, Docket No. 17-2019 (issued August 24, 2018).

<sup>14</sup> *N.S.*, Docket No. 19-0167 (issued June 21, 2019); *J.G.*, Docket No. 17-1382 (issued October 18, 2017).

<sup>15</sup> *A.B.*, Docket No. 16-1163 (issued September 8, 2017).

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a back condition causally related to the accepted July 12, 2017 employment incident.<sup>16</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 6, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 3, 2019  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>16</sup> The Board notes that where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).